

Examiner-Initiated Interview Summary	Application No. 10/674,763	Applicant(s) KUWAMURA, NOBUHIRO	
	Examiner Shane M. Thomas	Art Unit 2186	

All Participants:
Status of Application: Pending

 (1) Shane M. Thomas.

(3) _____.

 (2) Chun-Pok Leung (Reg. No. 41,405).

(4) _____.

Date of Interview: 31 August 2006
Time: 2:00 EST
Type of Interview:

- ☒ Telephonic
☐ Video Conference
☐ Personal (Copy given to: ☐ Applicant ☐ Applicant's representative)

 Exhibit Shown or Demonstrated: ☐ Yes ☒ No

If Yes, provide a brief description:

Part I.

Rejection(s) discussed:

Obvious-Type Double Patenting

Claims discussed:

Claim 11 of present application; claim 9 of 10/666,000

Prior art documents discussed:

Zaitzu (U.S. Patent Application No. 10/666,000)
Part II.

SUBSTANCE OF INTERVIEW DESCRIBING THE GENERAL NATURE OF WHAT WAS DISCUSSED:

See Continuation Sheet
Part III.

- ☒ It is not necessary for applicant to provide a separate record of the substance of the interview, since the interview directly resulted in the allowance of the application. The examiner will provide a written summary of the substance of the interview in the Notice of Allowability.
☐ It is not necessary for applicant to provide a separate record of the substance of the interview, since the interview did not result in resolution of all issues. A brief summary by the examiner appears in Part II above.

 (Examiner/SPE Signature)

 (Applicant/Applicant's Representative Signature – if appropriate)

Continuation of Substance of Interview including description of the general nature of what was discussed: the following consists of the double patenting rejection as discussed during the phone interview:

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim 11 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 9 of copending Application No. 10/666,000. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 11 claims a magnetic disk device where the number of writes to a given track are compared to a predetermined threshold, and if the number of writes is greater than the threshold, the magnetic disk device reads the data comprising the adjacent tracks and rewrites the data of the adjacent tracks to the respective adjacent tracks. The '000 application claims an identical magnetic read/write apparatus that implies the same methodology with track sectors, where if more than a predetermined number of writes occurs to a given sector of a track (tracks are comprised of sectors - 5 of the present specification), the adjacent sectors of the adjacent tracks are read and rewritten to the respective adjacent sectors. It would have been obvious for one having ordinary skill in the art to have modified the sector rewriting methodology and applied it to entire tracks rather than individual sectors. Determining the number of writes to a given track could have been easily calculated by one of having ordinary skill in the art by simply summing the number of writes to each sector for each sector of the given track. Further, such a modification would have allowed for less maintenance data (recording the number of writes to a given track/sector) as only the maintenance data for each track, rather than each sector of each track, would have been required, thereby lowering the space requirement for the inherent memory counter(s) that maintain the number of writes for each track/sector.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

The U.S. Patent and Trademark Office normally will not institute an interference between applications or a patent and an application of common ownership (see MPEP Chapter 2300). Commonly assigned US Patent Application 10/666,000, discussed above, would form the basis for a rejection of the noted claims under 35 U.S.C. 103(a) if the commonly assigned case qualifies as prior art under 35 U.S.C. 102(e), (f) or (g) and the conflicting inventions were not commonly owned at the time the invention in this application was made. In order for the examiner to resolve this issue, the assignee can, under 35 U.S.C. 103(c) and 37 CFR 1.78(c), either show that the conflicting inventions were commonly owned at the time the invention in this application was made, or name the prior inventor of the conflicting subject matter.

A showing that the inventions were commonly owned at the time the invention in this application was made will preclude a rejection under 35 U.S.C. 103(a) based upon the commonly assigned case as a reference under 35 U.S.C. 102(f) or (g), or 35 U.S.C. 102(e) for applications pending on or after December 10, 2004.